IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 790 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SHRI DEDSHI BHIMJI PATEL - Opponent(s)

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Appearance :
MS MS PANCHAL APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 28.06.1989 passed by the learned Judicial Magistrate, First Class, Junagadh in

Criminal Case No.3926/1985 whereby, the appeal was dismissed and the respondent–accused was acquitted of the charges levelled against him.

2. The brief facts of the prosecution case are as under;

2.1 The original complainant Shri J.P. Rajpara appointed as such vide Government Gazette produced on record at Exh.16, visited the shop of the respondent-accused on 30.04.1985 and after soliciting services of panchas and after giving intimation, collected the sample of Kulfi from the accused. The sample was collected by means of a steel bowl which was clean and dry. Thereafter, the same was poured into three dry and clean bottles which were thereafter closed by means of cork so as to prevent leakage and to prevent entry of moisture into the bottle. Thereafter seals were applied in accordance with the rules. One sample was forwarded on the next day with a memorandum, Form No. VII to the Public Analyst for analysis. The Public Analyst opined in his report, Exh.22, that the sample of Kulfi was not in accordance with the standard laid down under the Prevention of Food Adulteration Rules (hereinafter referred to as the Rules). Thereafter, on getting the consent, Food Inspector launched the prosecution against the accused and

sent the intimation to the accused along with a report of Public Analyst as contemplated under Section 13(2) of the Act.

2.2 As the accused denied the charges, the matter proceeded further. The Learned Magistrate has examined the complainant viz., Jamanadas Bhanajibhai Rajpara at length and recorded the deposition at Ex.11. The Panch Shri Hamirbhai Badarbhai Parmar has also been examined and his evidence is recorded at Exh.37 and has also relied upon several documentary evidence.

2.3 At the end of trial, the learned Magistrate acquitted the respondent of the charges levelled against him. Hence, this appeal.

3. Learned Additional Public Prosecutor, Ms.Panchal for the appellant has contended that the trial Court has committed an error in not believing the prosecution witnesses and has wrongly acquitted the accused of the charges levelled against him. He has also contended that the trial court ought to have believed the version of the prosecution witnesses who were present at the relevant point of time.

4. Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of

acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5. In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A

> duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".

[*Emphasis supplied*]

6. Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7. After considering the entire oral as well as documentary evidence on record, the trial Court has come to a finding that the sample was not collected from the premises of the respondent-accused. Apart from that, whether the food produce was produced in the same factory was not proved. Looking to the aforestated facts, the trial Court came to the conclusion that since it has not been proved that the sample was taken from the premises of the respondent-accused, benefit of doubt is required to be given to him, and, therefore, the accused have

been acquitted.

8. In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9. It is also required to be noted that in the case of **State of Maharashtra V/s. M/s Gopalprasad Govindprasad Agarwal**, reported in **AIR 1999 SC 1507**, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 30th August, 1985 and almost 18 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.

10. I am not discussing the evidence of each witness/s in detail in view of the observations made by the

Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

11. In the result, the appeal is dismissed.

Sd/-
(K.S.JHAVERI, J.)

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